

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 8, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07od-039

OAHU

Sale of Reclaimed Lands to Joseph J. Phillips Jr., as Trustee of the Joseph J. Phillips Jr. Living Trust dated October 5, 1987, and Stephanie J. Phillips, as Trustee of the Stephanie J. Phillips Living Trust dated October 5, 1987, and Cancellation of Grant of Non-Exclusive Easement S-5715 for Seawall Purposes, Kaalaea, (Kaneohe Bay), Koolaupoko, Oahu, TMK (1) 4-7-024:029 seaward.

APPLICANTS:

Joseph J. Phillips Jr., as Trustee of the Joseph J. Phillips Jr. Living Trust dated October 5, 1987, and Stephanie J. Phillips, as Trustee of the Stephanie J. Phillips Living Trust dated October 5, 1987, whose mailing address is 3418 Kepuhi Street, Honolulu, Hawaii 96815

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands located seaward of (1) 4-7-024:029, situated at Kaalaea, Koolaupoko, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

156 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES _____ NO x

CURRENT USE STATUS:

Subject to Grant of Non-Exclusive Easement S-5715 for seawall purposes to Joseph J. Phillips Jr., trustee, and Stephanie J. Phillips, trustee.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Applicant is a landowner and, as such, is not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine one-time payment of fair market value for the reclaimed (filled) land;
- 2) Consolidate the reclaimed land with the applicant's abutting property through the County subdivision process;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 4) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

Pursuant to Section 171-53(b), HRS, the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds that its disposition is not prejudicial to the best interests of the State, community or area in which such reclaimed land is located. Further, if the reclaimed land was filled in or made with the approval of government authorities and not otherwise filled in or made contrary to the public interest, the reclaimed land is valued as submerged land. Otherwise, it must be valued as reclaimed or fast land.

(The Land Board waived the \$500 encroachment fine at its April 12, 2002 meeting for the seawall easement request.)

The Phillips wrote a letter dated March 12, 2007 requesting to purchase the seawall and have their seawall easement cancelled. A letter from the Phillips' neighbor provided evidence that the seawall was in existence prior to June 1958 (see Exhibit B).

The Phillips are requesting a purchase, together with a cancellation of GL 5715 and a credit for the unexpired term of the easement to be applied toward the purchase price of the subject request. The 55-year easement cost of \$4,700.00 was based on the 2002 appraisal (see Exhibit C). The appraisal determined the annual rent to be \$204.00 (rounded). GL 5715 commenced on July 13, 2001. Upon approval, staff will adjust the account of GL 5715 and credit the balance of the GL 5715 consideration toward the purchase price.

The Department of Hawaiian Home Lands indicated they had no comments. The Office of Conservation and Coastal Lands had no objections. The City and County of Honolulu, Department of Planning and Permitting commented that if the seawall was built prior to June 22, 1970, it would be deemed nonconforming and an after-the-fact shoreline setback variance, pursuant to Chapter 23, Revised Ordinances of Honolulu, would be required.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board, subject to the applicants fulfilling all of the applicants' requirements listed above:

1. Authorize cancellation of Grant of Non-Exclusive Easement S-5715 upon execution of the quitclaim deed for the sale of the subject reclaimed.
2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as tax map key: (1) 4-7-024:029, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

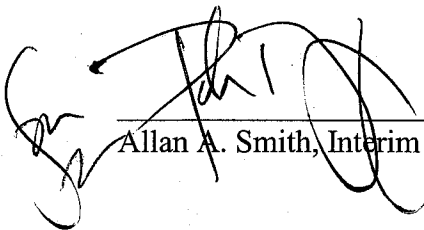
3. Find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area in which subject reclaimed land is located.
4. Authorize the sale of the subject reclaimed land to Joseph J. Phillips Jr., as Trustee of the Joseph J. Phillips Jr. Living Trust dated October 5, 1987, Stephanie J. Phillips, as Trustee of the Stephanie J. Phillips Living Trust dated October 5, 1987, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. A credit for the unexpired term of GL 5715 to be applied toward the purchase price;
 - b. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the County subdivision process;
 - c. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:



Allan A. Smith, Interim Chairperson

Dwg. No.: 3889
 Source: T.M.B. & Ld. Ct. App. 1341
 By: H.N. D.Y. 25PT. 1943

Port. KALAE, KOOLAUPONO, OAHU.
 Ld. Ct. App. 1341

Note: All lots owned by Francis B. & Mrs. J. S. unless otherwise noted.

SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FIRST DIVISION			
ZONE	SEC.	PLAT	
4	7	24	
CONTAINING PARCELS			
SCALE: 1" = 50 FT.			

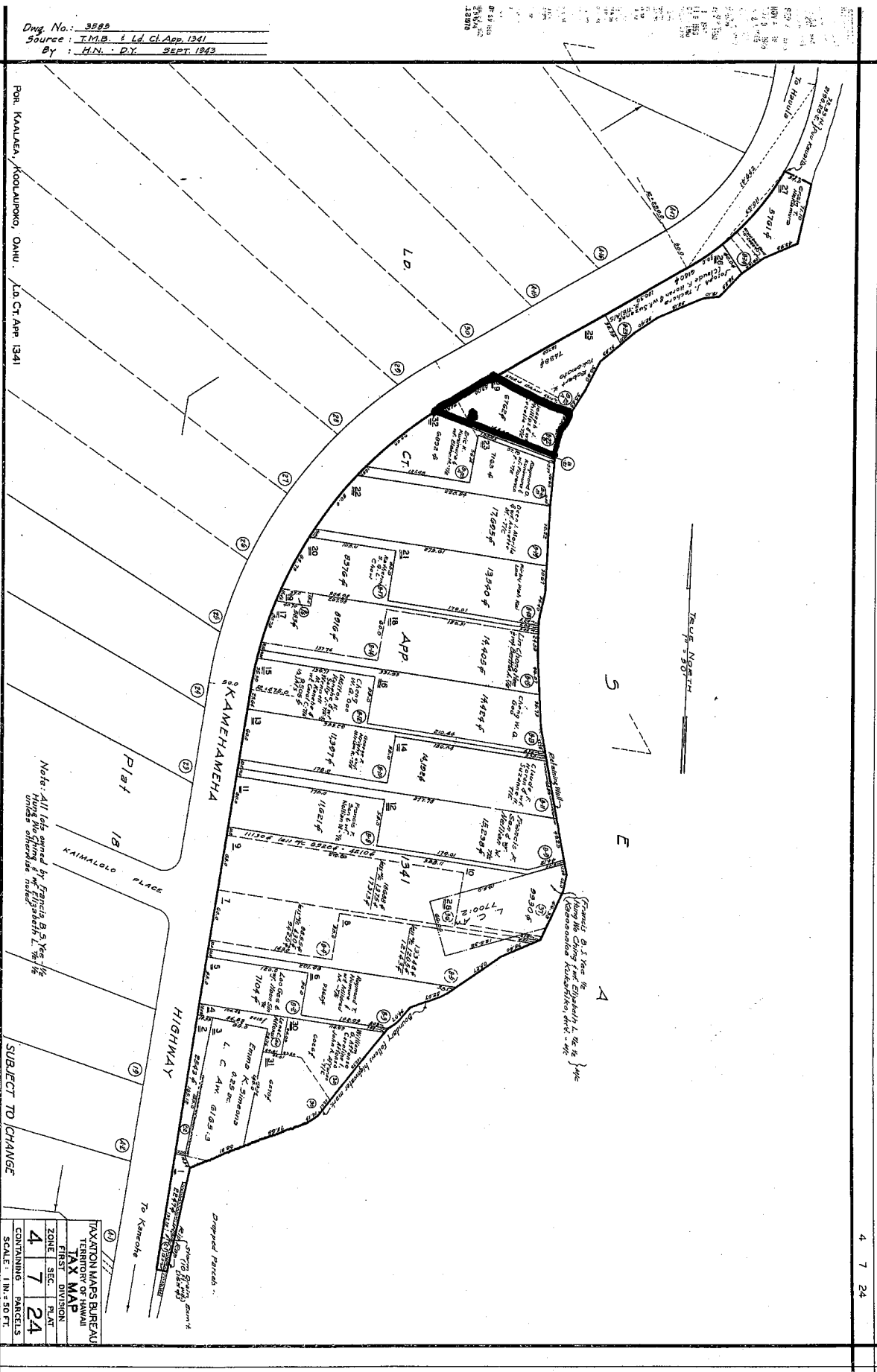


EXHIBIT "A"

February 7, 2002

State of Hawaii
Department of Land and Natural Resources
Land Division-Coastal Lands Program
1151 Punchbowl Street Room 220
P.O. Box 621
Honolulu, Hawaii 96809-0621

Attention: Mr. Masa Alkire-Planner

Dear Mr. Alkire:

My name is Joseph M. Pacheco Jr., I reside at 47-876 Kamehameha Highway Kaneohe, Hawaii 96744. My neighbor, Joseph J. Phillips Jr., who lives on the makai side of Kam Hwy. across the street from me has asked if I would provide a statement to your office confirming the existence of the wall on their property fronting the ocean. The existing rock wall that extends furthestmost into the makai portion of the property fronting the ocean was in place when we moved to the area in June 1958. The reason I can confirm this is because our family has deeded access to the right of way located next to the Phillips property which we have used over the past forty four years. So to my knowledge the rock wall has been in place since that date.

Should you have any further questions, contact me at 239-8404.

Joseph M. Pacheco Jr. 2/7/02

EXHIBIT "B"

EXHIBIT A

**TABLE OF CALCULATIONS
LEASE RENT DETERMINATION
Kaneohe Bay Pier & Easement**

PSF No.: 02OD-143

Pier Lease

Seawall Easement

TMK:	4-7-24, Parcel 29	4-7-24, Parcel 29
Fast Land Area:	6,762	6,762
Pier Submerged/Seawall Easement Area:	1,030	156

Lump Sum Payment Calculation

Land Assessment*	\$ 248,100	\$ 220,600
Per Sq. Ft.	\$ 36.69	\$ 32.62
Submerged Land Adjustment	50%	100%
Adjusted Land Value	\$ 18.35	\$ 32.62
Pier/Seawall Area	1,030	156
Pier/Seawall Land Value	\$ 18,900.50	\$ 5,088.72
Multiplied By 4% Rate of Return	4%	4%
Annual Rent (Rounded)	\$ 756	\$ 204
<u>Present Value Calculation</u>		
Factor for 55 Years at 4%	22.1086	22.9930
Lump Sum Payment (Rounded)	\$ 16,700	\$ 4,700

* Pier Assessment is stipulated to be Year 2000 based; easement valuation is based on Year 2002.

Based on the Board accepted formula accepted February 23, 2001, Item D-7.

Source: DLNR, Land Division, Appraisal

EXHIBIT "C"